



South Dakota

Legislative Research Council

Rules Review Committee Minutes

Three hundred forty-eighth meeting
Monday
April 20, 2015

Room 413
State Capitol
Pierre, South Dakota

The three hundred forty-eighth meeting of the Rules Review Committee was called to order by Senator Mike Vehle (Chair) at 10:00 a.m., CT, on April 20, 2015, in Room 413 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jim Bradford and Mike Vehle (Chair) and Representatives Peggy Gibson, Jean Hunhoff, and Timothy Johns (Vice Chair). Member excused: Senator Phyllis Heineman. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.sd.gov> under "Interim."

Approval of Minutes

Representative Gibson moved, seconded by Representative Johns, that the minutes of the March 13, 2015, meeting be approved. Motion prevailed on a voice vote.

Representative Gibson moved, seconded by Representative Johns, that the minutes of the December 16, 2014, meeting be approved. Motion prevailed on a voice vote.

Rules Reviewed

Department of Agriculture: Division of Ag Development – Amend Value Added Agribusiness Relending Program rules to enhance the definition of "Rural Area" and to increase the loan amount as a percent of total project costs.

Mr. Decker stated that the Department of Agriculture: Division of Ag Development proposed rules had been withdrawn due to a procedural issue.

Department of Agriculture: SD Weed and Pest Control Commission – Amend a rule to add Japanese beetle and tarragon to the local noxious weed and declared pest list.

Ms. Brenda Sievers reviewed the proposed rule. It was noted that the commission decided not to add tarragon to the local noxious weed list.

Representative Johns moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Agriculture: SD Weed and Pest Control Commission is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Game, Fish and Parks – Amend a rule to allow dogs to be used to hunt mountain lions year round in all areas of the state located outside of the Black Hills Fire Protection District.

Mr. Tony Leif reviewed the proposed rule. It was noted that the commission had been petitioned to consider the proposed rule change. The proposed rule was adopted by the commission on January 15th and filed with the Secretary of State prior to the expiration of the 75-day rule (SDCL 1-26-4.3); thus no committee action was necessary.

Following a brief discussion on the necessity of the proposed rule, *Senator Bradford moved, seconded by Representative Gibson, to give notice to the Game, Fish, and Parks Commission of the committee's intent to hold a suspension hearing regarding the proposed rule change. Motion failed on a roll call vote with 2 ayes, 3 nays, 1 excused. Members voting aye: Bradford, Gibson. Members voting nay: Hunhoff, Johns, and Vehle. Member excused: Heineman.*

Department of Game, Fish and Parks – Amend a Use of Parks and Public Lands rule to expand the area within North Point Recreation Area in Charles Mix County that is restricted to shot shell and archery hunting to include the area situated west of 382nd Avenue and north of 297th Street, and situated south of 297th Street and west of Prairie Dog Bay; amend a Public Water Zoning rule to amend the existing "no wake zone" and designate a "public swimming zone" at Rocky Point Recreation Area on the Belle Fourche Reservoir in Butte County; amend a Refuges rule to eliminate the Cottonwood Lake State Waterfowl Refuge in Sully County; and amend Aquatic Nuisance Species rules to change all references in current rule from "aquatic nuisance species" to "aquatic invasive species", add "Common Reed, *Phragmites australis*" to the list of invasive plants, allow law enforcement officers to require the removal of vegetation and all aquatic invasive species from a boat, and to require that all drain plugs and related devices be opened or removed from all boats when being transported with exceptions for emergency response boats and vehicles and other boats while on lands owned, leased, controlled, or managed by the department or other government entities adjacent to the water, authorize the department secretary to declare a waterbody an aquatic invasive species containment water, describe the conditions that would necessitate this action, and outline department responsibilities, and prohibit the transportation of fish and aquatic bait in water away from any aquatic invasive species containment water body except when on lands owned, leased, controlled, or managed by the department or other government entities, and allow no more than five gallons of vegetation-free water to be possessed for transport of bait and fish away from water bodies not designated as aquatic invasive species containment waters.

Mr. Tony Leif reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Johns, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Game, Fish and Parks – Amend a Hunting Requirements and Prohibited Methods rule to clarify that the 20 person limit on those who are engaged in party hunting only includes those persons in the party who are carrying a firearm, crossbow or bow and arrow; amend Black Hills Elk Hunting Season rules to adjust the number of licenses available for "any elk" and "antlerless elk"; allocate a pool of "antlerless elk" contingency licenses, up to 20% of antlerless elk licenses available from all Black Hills hunting units, which would be issued by GFP Commission resolution in August if summer range conditions dictate the use of contingency licenses; and repeal Unit BHE-ZZ1; amend a Custer State Park Elk Hunting Season (Any Elk) rule to adjust the number of licenses available for "any elk" and repeal Unit CUE-ZZ1; amend Mountain Goat Hunting Season rules to offer 2 "any mountain goat" licenses and change the season dates from the first Saturday of October to October 31, to September 1 to December 31; amend an Archery Elk Hunting Season rule to adjust the number of licenses available for "any elk" and "antlerless elk" and repeal Unit AEE-ZZ1; amend a Prairie Elk Hunting Season rule to adjust the number of licenses available for "any elk" and "antlerless elk"; no licenses would be issued for Unit 30A (portions of Gregory County); add that portion of Jackson County south of Highway 44 and BIA Highway 2 to Unit 11A, B, C, and D; adjust the season dates for Unit 11C from the second Sunday of October to December 31, to the second Sunday of October to November 30; and repeal Unit PRE-ZZ1; and amend a Custer State Park Non-Trophy Bison Harvest rule to change the season length and season dates from 49 days beginning the first Saturday in October to 47 days beginning the 4th Monday in January.

Mr. Tony Leif reviewed the proposed rules.

Representative Johns moved, seconded by Representative Gibson, that the review of the rules proposed by the Department of Game, Fish and Parks is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Transportation – Amend a Speed Zone rule to change a reference from SD Highway 264 to Aspen Boulevard in two limited speed zone segments on SD Highway 11 in Brandon.

Department of Transportation – Amend a Speed Limits rule in Grant County to extend a 45 mph limited speed zone on U.S. Highway 12 on the east side of Milbank an additional 0.60 mile east past the new Runnings store.

Mr. Bill Nevin reviewed both sets of rules proposed by the department.

Representative Hunhoff moved, seconded by Representative Gibson, that the review of both sets of rules proposed by the Department of Transportation is complete. Motion prevailed on

a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Revenue: Division of Business Tax – Amend rules to clarify the definition of the term "receive," source attorney services at the office of the attorney who is performing such services, and clarify the taxability of nonresident attorney services used in South Dakota.

Ms. Alison Jares reviewed the proposed rules.

Representative Johns moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Revenue: Division of Business Tax is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Revenue: SD Commission on Gaming – Amend Gaming rules to add a free bonus feature to Buster Blackjack; clarify the rules of the game of War blackjack; provide for consistency among progressive games for Three-card poker, Let it ride and let it ride bonus including three card bonus optional side bet or progressive optional side bet, Caribbean stud poker, Four-Card poker, Texas Hold'em Bonus poker, Mississippi Stud, and Ultimate Texas Hold'em; and add an optional four card bet to Silverado Stud poker.

Mr. Craig Sparrow reviewed the proposed rules. He noted that the commission did not approve the proposed changes to ARSD 20:18:15:30.07 *Variations of play -- Buster Blackjack* and should be removed from the final rules. A copy of ARSD 20:18:15:30.12 *Variations of the play -- War blackjack* was distributed as this change was approved by the commission and had been omitted from the final rules (**Document 1**).

Representative Gibson moved, seconded by Senator Vehle, that the review of the rules proposed by the Department of Revenue: SD Commission on Gaming is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Environment and Natural Resources: Board of Water and Natural Resources – Amend Consolidated water facilities construction program rules to increase the amount in the definition of "Minimum established rates" for water and wastewater users in an incorporated municipality or sanitary district, remove application restrictions that prohibit a project from including preliminary design costs in the total project cost, remove the requirements of applications to include the status of permits, required lands, easements and right of way, and provide a time length for the applicant to correct the identified deficiencies; amend State water pollution control revolving fund program rules to update the definition of "Act", revise the definition of "Interim financing" from three years to five years, establish a definition for "Median household income" and source for that information, increase the amount in the definition of "Minimum established rates" for wastewater users in an incorporated municipality or sanitary district, establish a definition for "Unemployment rate" and the source for that information, revise the definition of "wastewater treatment works",

repeal the "Green infrastructure priority points" section and remove references to this section, revise the criteria for principal forgiveness eligibility, establish affordability criteria to receive principal forgiveness, revise required information to be submitted as part of the application for funding, add a section reference, and extend the duration of assistance for interim financing to five years and minor grammatical changes; amend Solid waste management programs rules to change the requirements of documents that must be submitted as a part of the application, provide a time length for the applicant to correct the identified deficiencies, and repeal a duplicate section; and amend Drinking water state revolving fund program rules to update the definition of "Act", increase the amount in the definition of "Disadvantaged community" for water users in an incorporated municipality or sanitary district, revise the definition of "Interim financing" from three years to five years, update the definition for "Median household income" and the source for that information, increase the amount in the definition of "Minimum established rates" for water users in an incorporated municipality or sanitary district, repeal the "Green infrastructure priority points" section, and remove references to this section, adjust the affordability priority point criteria, revise required information to be submitted as part of the application for funding, and extend the duration of assistance for interim financing to five years, and provide for financing to increase from 20 years to up to 30 years as permitted by the Act.

Mr. Mike Perkovich and **Mr. Andy Bruels** reviewed the proposed rules.

Senator Vehle moved, seconded by Senator Bradford, that the review of the rules proposed by the Department of Environment and Natural Resources: Board of Water and Natural Resources is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Secretary of State: Board of Finance – Amend rules to increase the allowance for use of a privately owned vehicle, airplane rates, and per diem rates (out-of-country, out-of-state and in-state); increase the allowance for use of a privately owned vehicle and the lodging reimbursement for individuals with special needs; remove the evening supper allowance; increase the per diem rate for use of a private trailer house; and amend what is included in registration expense.

Mr. Jason Dilges, Commissioner of the Bureau of Finance and Management, reviewed the proposed rules for the board. He noted that the board would like to have the proposed changes effective July 1, 2015.

Representative Gibson moved, seconded by Representative Johns, that the review of the rules proposed by the Secretary of State: Board of Finance is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Department of Health: Board of Medical and Osteopathic Examiners – Adopt rules to establish what constitutes a conflict of interest and a potential conflict of interest related to hearings held by the board; establish best practices related to prescribing controlled substances; and add a code of ethics to existing rules.

Mr. Tyler Klatt reviewed the proposed rules. He noted that the board removed from the packet the proposed rule regarding best practices related to prescribing controlled substances.

Representative Gibson moved, seconded by Senator Bradford, that the review of the rules proposed by the Department of Health: Board of Medical and Osteopathic Examiners is complete. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Bradford, Gibson, Hunhoff, Johns, and Vehle. Member excused: Heineman.

Other Items

Waiver Request

Ms. Jacque Storm, on behalf of the South Dakota Retirement System (SDRS), appeared to request a waiver to the requirement that the minutes are served on the committee at least five days before the agency appears before the committee to present the rules. The SDRS's board will meet on June 4th to approve rules regarding House Bill 1011 which they would like to have effective on July 1st. The next meeting of the committee is scheduled for June 8th.

Following a brief discussion, *Representative Johns moved, seconded by Representative Gibson, that the requirement of SDCL 1-26-4(8) which requires the minutes be served at least five days prior to the June 8th meeting be waived and that SDRS staff provide the minutes via email on Friday, June 5th, to all members. Motion prevailed on a voice vote.*

Ms. Storm will also provide hard copies at the meeting.

Additional Information Request

Chair Vehle would like to have agencies provide to the committee, along with the current requirements, an outline that shows that the rule-making process as required in SDCL 1-26 has been completed. Staff distributed a sample outline along with the "Directions for Submitting the Final Draft" that is currently used (**Documents 2 and 3**). Chair Vehle would like to further discuss this topic at the next meeting.

Shannon County Name Change

Mr. Decker stated that the name of Shannon County will be changed to Oglala Lakota County effective May 1, 2015. There are approximately twenty administrative rules that will need to be updated.

Representative Johns moved, seconded by Representative Gibson, that all references to Shannon County in the administrative procedures act that reference Shannon County be changed to Oglala Lakota County. Motion prevailed on a voice vote.

Next Meeting Date

The next interim meeting of the Interim Rules Review Committee will be on Monday, June 8, 2015.

Adjournment

Representative Johns moved, seconded by Representative Gibson, that the meeting be adjourned. Motion prevailed on a voice vote.

Chair Vehle adjourned the meeting at 1:40 p.m.